Supreme Court, U.S.
FILED

00 1480 DEC 22 2000

OFFICE OF THE CLERK

No. 00-3-421

In The
Supreme Court of the United States

CHERYLYNN COSTNER; LET GO PRODUCTIONS,

PETITIONERS,

v.

COMIC RELIEF, INC.; HOME BOX OFFICE; ROBERT ZMUDA; JOHN DAVIES; JOSEPH TROIANI, PH.D.; DOLLY KELLERHOUSE; STATE BAR OF CALIFORNIA; MITCHELL, SILBERBERG & KNUPP; WELLCOME; FIENMAN & APPLEGATE; CALIFORNIA STATE JUDICIARY; CALIFORNIA STATE LEGISLATURE; AMERICAN BAR ASSOCIATION; GOVERNOR PETE WILSON; COUNTY OF LOS ANGELES; STATE OF CALIFORNIA; DOES 1 THROUGH 92,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE 9TH CIRCUIT COURT OF APPEALS.

APPENDIX FOR WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

August 24, 2000

CHERYLYNN COSTNER; LET GO PRODUCTIONS,

Plaintiffs-Appellants,

vs.

ROBERT ZMUDA; COMIC RELIEF, INC.; HOME BOX OFFICE; JOHN DAVIES; JOE TROIANI, M.D.; MITCHELL, SILBERBERG & KNUPP; COUNTY OF LOS ANGELES; STATE OF CALIFORNIA JUDICIARY; STATE BAR OF CALIFORNIA; STATE OF CALIFORNIA; WELLCOME, FEINMAN & APPLEGATE; CALIFORNIA STATE LEGISLATURE; FLORENCE KELLERHOUSE; THE AMERICAN BAR ASSOCIATION; PETE WILSON, Governor,

Defendants-Appellees.

No. 99-55803

DC# CV-97-09530-WMB

Central California (Los Angeles)

ORDER

Before: PREGERSON, FERNANDEZ, and WARLAW, Circuit Judges.

The panel has voted to deny Costner's petition for rehearing and for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App, P. 35.

The petition for panel rehearing en banc is denied.

No further filings will be accepted in this closed appeal.

No. 99-55803

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHERYLYNN COSTNER; LET GO PRODUCTIONS,

Plaintiffs and Appellants,

vs.

COMIC RELIEF, INC.; HOME BOX OFFICE; ROBERT ZMUDA; JOHN DAVIES; JOSEPH TROIANI, PH.D.; DOLLY KELLERHOUSE; STATE BAR OF CALIFORNIA; MITCHELL, SILBERBERG & KNUPP; WELLCOME, FEINMAN & APPLEGATE; CALIFORNIA STATE JUDICIARY; CALIFORNIA STATE LEGISLATURE; AMERICAN BAR ASSOCIATION; GOVERNOR PETE WILSON; COUNTY OF LOS ANGELES; STATE OF CALIFORNIA; Does 1 through 92,

Defendants and Appellees.

APPEAL FROM FINAL DECISION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

APPELLANTS CHERYLYNN COSTNER AND LET GO PRODUCTION'S REQUEST FOR A REHEARING OR A REHEARING EN BANC

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INTRODUCTION AND STATEMENT OF APPELLANTS IN PRO SE

Cherylynn Costner and Let Go Productions, appellants in Costner vs. Zmuda, No 99-55803, seeks rehearing en banc of the May 22, 2000 Panel decision (Pregerson, Fernadez, and Warlaw) concerning the 1st Amended Complaint against defendant/respondents for damages for conspiracy to violate and violations of the **Ku Klux Klan Act**, **Deprivation of Civil Rights** among other causes of action seeking **Injunctive Relief** and a **Demand for Trial by Jury**.

This case is of National importance because the civil right of every United States citizen is what makes our country a free land. What could be of more National importance than for Civil Rights to be a REALITY and not just words that people talk about?

This is a difficult case because the Court must review the actions of other judges. The issue is even more difficult because the allegations include not just disputed legal interpretation but also a lack of due process. The Panel Circuit Judges' submitted Memorandum reflects unwillingness to address or even acknowledge a substantive violation of appellant's rights to due process and equal protection of civil rights.

Summing up the 60 page first amended complaint as one arising from a personal relationship with Zmuda in the Memorandum of review De Novo would make the *"Average Man"* wonder if the Panel had read the appellant's brief or lower court file at all.

The defendants and courts have, in an apparent effort to distort the facts and divert the Court's attention from the issue at hand, consistently portrayed this case as one involving a personal relationship with Zmuda. This is a diversion from the facts within the first amended complaint. In reality the litigation in the instant case springs from a

malicious breach of contract between Zmuda (and his Corporation, Comic Relief) and Costner (and her company, Let Go Productions). The sanctity of the right to contract is at issue here. Is the existence of a personal relationship a total defense from breach of contract? If so, this is truly new law untaught in any law school and not found in any lawbook.

Zmuda solicited Costner's assistance to help him produce his multi-million dollar fund-raisers for Comic Relief, Inc., in return for her personal assistance and years of experience in the entertainment industry. Zmuda promised to pay for the projects under development for Costner and Let Go Productions and to use his connections in the Home Box Office his parent company and other connections he had.

However, after Costner fulfilled her part of the agreement Zmuda betrayed her trust and their business agreement. Zmuda stated that he could get away with any illegal acts against her because he had money and power to hire professional lawyers to deprive her of civil rights and any semblance of justice. On this point Zmuda is beginning to appear correct.

This case that started as a breach of contract and has evolved into a case whereas Zmuda, with his money and lawyers, have been aided by those lawyers appointed as judges, to knowingly and willingly conspire to deprive petitioner of her most basic rights, including:

(1) meaningful access to the courts;
(2) the right to be heard on the merits of the case;
(3) Due process and equal protection of the law.

This legal abuse has reduced all of her rights to nothing more than a farce, a sham, and a nullity. The Los Angeles, California District Court, here and now, continues to compound this male conspiracy. This trend within the legal system is causing irrefutable harm to the integrity of the court process and this case should immediately be remanded to the District Court for full discovery and a trial on the merits.

The instant Memorandum in error of material and controlling facts because:

(1) The Panel alleges that it appears beyond a doubt *that "Costner can prove no set of facts in support of her claims"* which would entitle her to relief in her lower court filings. This is a manifest error of fact and law in a civil rights case.

(2) The Court has misapplied the case law regarding vacating default judgments as in this case no defendants ever appeared prior to the Entry of Default by the District Court Clerk;

(3) The Panel incorrectly stated that extra-judicial bias or deep seated and unequivocal antagonism was not shown in Costner's motion to disqualify Judge Byrne. The Panel supported their misleading statement with a case that involved a trial and multiple recusal motions. Previously in the instant case, Judge Byrne has acted as a defense attorney for defendants. Prejudicially Judge Byrne made numerous motions on defendants' behalf while knowingly making statements that were factually inaccurate and not supported by the record.

(4) The Panel alleges that Judge Lew made a lawful ruling. The truth is however, that as per the Panel's case authority, the counsel's copy was unsigned. In this case however, Lew's unlawful ruling in the Court's original document is in violation of the **Federal Rules of Civil Procedure rule 58** because the Appellants submitted the Certified Copy of the unsigned order in their Notice of Appeal;

(5) The Panel claims that *"the District Court did not abuse its discretion by denying Costner's motion for reconsideration"*. Yet, the law requires the Judge to reconsider if the Magistrates ruling is based on erroneous facts or laws;

(6) The Panel ruled that petitioners' remaining contentions lack merit yet failed to specify which issues they were addressing or on what grounds they made such a decision.

It appears that Judge Byrne abused his discretion b supporting Magistrate Phillips' recommendation. Judg Byrne showed his prejudice and discrimination agains plaintiff by making broad general statements that are no supported by specific examples of controlling law; (a) Byrne falsely alleges that Plaintiff's complaint failed entirely t conform to the pleading requirements of the federal rules o Civil Procedure, he did not specify how they were deficient (b) alleges the plaintiff failed to notify defendants as to which claim pertained to them or which events implicated them in the event she described. Plaintiff in her complaint gave specific details as to the illegal actions being perpetrated upon her by each defendant; (c) the court also alleges that she presented no facts involving the conspiracy of joint players. The law on conspiracies is very clear. The co-conspirators do not all have to sit around the table and collectively agree to the conspiracy and they do not even have to know of the purpose of the conspiracy in toto, see Hobson vs. Wilson 737 F.2d 1, 51 (1984). All that is required in order to join them to the conspiracy is to take some act that would further the goal of the conspiracy, see Sunset Bay Associates vs. Euricka Federal Savings and Loan Association 944 F2.d 1503, 1517 (9th Cir. 1991).

The law also holds that willful ignorance of the conspiracy is also no defense as per the Federal Courts Doctrine called the **Alice in Wonderland Syndrome**.

There is nothing of more national importance than for the citizens of the United States of America to live, work and contract with freedom and security.

PETITION FOR A REHEARING EN BANC

A. The Panel's Opinion is in error in recitation of material and controlling facts and in doing so should be set aside and the matter remanded to the District Court or brought before the Chief Justice and the En Banc Panel for a rehearing.

The Panel states that it appears beyond a doubt that *"Costner can prove no set of facts in support of her claims which would entitle her to relief"* in her lower court filings. This is a manifest error of fact and law. The record proves the District Court's refusal to allow any evidentiary hearing or cross-examination by the Plaintiff-Appellant discovery or a trial by Jury. Secret, ex-parte investigations denying Appellant the opportunity to cross-examine and respond is the only possible way the Panel could make such an allegation against Appellant. That is unfair and forbidden by legal ethics and the requirements of due process and equal protection of the law.

Petitioner must be allowed to proceed to trial and let a Jury decide on the merits of the case if in her moving papers the allegations if proven to be true would entitle her to relief. For the sake of this determination ALL of her allegations against defendants are considered to be true. It is a breach of discretion and obstruction of justice for a Judge not to allow the case to go to trial. Just a further compounding of the conspiracy to violate her rights under color of law.

In addition, the law requires **42 USC 1983, 1985** cases **Bivens** actions require the lower court to specifically state how the petitioners pleadings are defective and give leave to amend the complaint to correct such flaws. The first amended complaint was amended before it and complaint was served to defendants and the District Court Magistrate Phillips misled the court by erroneously stating in her recommendation that the court had granted leave to amend.

The Panel has misapplied the case law regarding vacating default judgements, because in this case, defendants State Bar of California, County of Los Angeles, Mitchell, Silberberg & Knupp and Wellcome, Fienman and Applegate never had ever appeared prior to the **Entry of Default by the District Court Clerk,** the court made its own motions in favor of defendants based on facts not found in the record, and failed to order all defendants to respond to the address for the service on the Summons issued by the District Court.

The Panel incorrectly stated that extra-judicial bias or deep seated and unequivocal antagonism was not shown in Costner's motion to disqualify Judge Byrne. The Panel supported their misleading statement with a case that proceeded through trial and had multiple recusal motions. In this case, Judge Byrne tried to bar the CourtHouse door immediately. The Appellant never had a day in Court and had a right to one recusal based on her affidavit in support thereof.

Illegally, Judge Byrne acted as attorney for his fellow lawyer defendants by knowingly making statements that were factually inaccurate and not supported by the record so that he could protect the wealthy and powerful defendants from having to lie for themselves. This certainly is outside the scope of Chief Judge William Mathew Byrne, Jr.'s Judicial Duties and Oath of Office.

In their moving papers, Defendants are required to be specific regarding flaws in the pleadings. Plaintiffs are also allowed to amend. Then the case should proceed with examining evidence, doing discovery and presenting the facts to a Jury and a fair and impartial judge.

The Panel alleges that Judge Lew made a lawful ruling. The truth is however, that as per the Panel's case authority there is no proof of a lawful order made, There was no minute order issued on this motion. It is therefore impossible for the clerk to know of the judge's lawful intent. The ruling was non

existent, the paper that proported to be a ruling was plaintiff's proposed order, not the judges, and did not comply with the rules of the FRCP rule 58 which requires that the original document have the judges signature.

Appellant included in her Notice of Appeal a District Court Certified copy of the order having no signature of Judge Lew or the signature of any identifiable person on the document. It is therefore self evident that Judge Lew did not produce a minute order nor was his signature as required by **FRCP rule 58 Entry of Judgment**.

The Panel claims that *"the District Court did not abuse its discretion by denying Costner's motion for reconsideration"*. Yet, the law requires the Judge to reconsider if the Magistrates ruling are based on erroneous facts or laws. Judge Byrne showed his prejudice and discrimination against plaintiff by making broad general statements that are not supported by specific examples of controlling law as follows:

(a) Judge Byrnes falsely alleges that Plaintiff's complaint failed entirely to conform to the pleading requirements of the Federal Rules of Civil Procedure, he did not specify how they were deficient. Cases of conspiracy, RICO and Anti-Trust are exempt from the FRCP rule 12 on short concise statements;

(b) Alleges the plaintiff failed to notify defendants as to which claim pertained to them or which events implicated them in the event she described. Plaintiff in her complaint gave specific details as to the illegal actions being perpetrated upon her by each defendant.

The Panel ruled that petitioner's remaining contentions lack merit and failed to specify which issues they were addressing or what ground they made such a decision. It appears that Judge Byrne supporting Magistrate Phillips' recommendation showed his prejudice and discrimination

against plaintiff by making broad general statements that are not supported by specific examples of controlling law.

The Panel is misleading by its footnote 3 on page 2 regarding Let Go Productions' representation by Costner. Having researched the Panel's case authority Church of the New Testament v. United States, 783 F.2d 771, 773-74 (9th Cir. 1986) which on page 773 states that *"Unincorporated associations . . . except in extraordinary circumstances, they can not be represented by laypersons,"* citing from In re Highly, 459 F.2d 554, 555 which states that *"A corporation can appear in a court proceeding only through an attorney at law"*. See, e.g., United States v. 9.19 Acres of Land, 416 F.2d 1244, 1245," which states that " . . . *a corporation can not appear otherwise that though counsel."*

Ms. Costner is the sole proprietor of Let Go Productions having no board of directors or members thereof. Therefore, representation in this case for appellant Let Go Productions by Ms. Costner who represents no other interest than her own is proper under the provisions of **28 USC section 1654** (1964). In addition, the Panel's advanced case states ***"except in extraordinary circumstances"*** which again confirms Costner's right to ask the Jury in the lower court if the Monopoly on the practice of law should deprive her of her right to protect her own interest in business, or should the Bars violations of the RICO, ANTI-TRUST be corrected instead.

B. **The right to be heard by a fair and impartial Judiciary is of National importance effecting the lives, liberty and happiness of every American.**

It appears from the comments in the memorandum that the Panel Judges are or have been conducting their own investigation and engaging in extra judicial communication with defendants and their lawyers as certain statements made are unsupported by the record. This is obviously unfair as it deprives Appellant the right to cross-examination or to refuterate false statements and allegations. *"Justice is the end of*

government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit," James Madison, **The Federalist** No. 51 (1788). The appellants seek justice and the rights to be heard by a fair and impartial Judiciary.

- Appellants seek to have a jury, which is in fact and Constitutional law the trier of both law and fact. Appellants seek to have a jury to determine the legality of absolute judicial immunity whereas she feels that at no time was it the intent of the Founders to allow Judges immunity for willful violations of well established Constitutional and statutory law. In fact, the Founders including Thomas Jefferson considered a Judiciary out of control the greatest possible threat to our liberty and a guaranteed prescription for tyranny.

The law is settled and there is no disputing appellant's right to seek injunctive relief that will prohibit any judge from violating her rights. Judge Byrne showed his prejudice against plaintiff by failing to address the complaint's request for injunctive relief.

If the courts refuse through acts or omissions to deny appellants a hearing on the merits of the case and continue to allow the respondents/defendants in the lower courts to commit perjury and suborn perjury to make fraudulent official filings, then these intentional false statements of fact and law will be indisputable prima face evidence that the entire federal legal system is just as corrupted as the California State Court, and that the professional State Bar licensed lawyers acting as defense attorneys and federal judges have conspired one with another to fix the legal system so they could bar *"We the People"* from meaningful access to the courts and justice. This makes it impossible for Appellant to have her Constitutional Rights protected and makes a mockery of justice.

This constitutes the de facto overthrow of the US Constitution depriving the Court of any credibility as impartial defender of our rights to liberty and justice and the only remedy left will be for the People to demand that Congress prosecute and impeach all of those lawyers acting as judges who are engaging in the greatest possible betrayal of their public trust whose conduct is on its fact a clear and present danger to the lives liberty and property of everyone living in America.

Finally, Costner is a pro se litigant. As such she writes with an unlearned hand. The controlling law by the United States Supreme Court in Hanes vs. Kerner ruled that Pro Se litigants are not to be held to the standard of a practicing lawyer. It is the presiding judges' duty to ascertain which relief she is seeking and use their experience to assist pro se litigants in attaining justice.

C. **The Panel wrongfully denied the Appellant's the right to oral arguments under the provisions of Rules of Appellant Procedure rule 34 (a) (2).**

The memorandum cites **Federal Rules of Appellant Procedure rule 32 (a) (2), which states that oral argument must be allowed**. The Panel failed to cite a subsection that would have exempted them from the need to hear the Appellants oral arguments.

*"**Oral arguments must be allowed in every case** unless a Panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:*

(a) *the appeal is frivolous;*

(b) *the dispositive issue or issues have been authoritatively decided; or*

(c) *the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would*

not be significantly aided by oral argument," FRAP rule 34 (a) (2) (a) (b) (c).

The Panel's case - authorities are misleading and therefore irrelevant to this case.

The lower courts' orders contain facts not found in the record and were based on facts known not to be true by the defendants. Therefore oral argument should be granted, as it would significantly aid the decisional process of this court, please see Appellant's Request for Oral Arguments.

CONCLUSION

All appellants seek are a fair and impartial trial by their peers. Therefore appellants humbly request that this Court finally require Defendants to play by the rules binding the rest of the citizenry and order the case remanded for discovery and trial on the merits.

In the alternative, the Chief Justice of the 9th Circuit Court of Appeals should calendar in a rehearing en banc on this matter.

Respectfully Submitted,

Dated July 19, 2000

Cherylynn Costner
In Pro Se for Appellants

NOT FOR PUBLICATION

June 7, 2000

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHERYLYNN COSTNER; LET GO PRODUCTIONS,

Plaintiffs-Appellants,

vs.

ROBERT ZMUDA; COMIC RELIEF, INC.; HOME BOX OFFICE; JOHN DAVIES; JOE TROIANI, M.D.; MITCHELL, SILBERBERG & KNUPP; COUNTY OF LOS ANGELES; STATE OF CALIFORNIA JUDICIARY; STATE BAR OF CALIFORNIA; STATE OF CALIFORNIA; WELLCOME, FEINMAN & APPLEGATE; CALIFORNIA STATE LEGISLATURE; FLORENCE KELLERHOUSE; THE AMERICAN BAR ASSOCIATION; PETE WILSON, Governor,

Defendants-Appellees.

No. 99-55803

DC# CV-97-09530-WMB

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MEMORANDUM

Appeal from the United States District Court
for the Central District of California
William Matthew Byrne, jr., District Judge, Presiding

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1 This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

Submitted May 22, 2000 (2)

Before: PREGERSON, FERNADEZ, and WARDLAW, Circuit Judges.

Cherylynn Costner (3) appeals pro se the district court's judgment dismissing, for failure to state a claim, her action under 42 U.S.C.§ 1983 and other federal laws. Costner claimed in her 60-page first amended complaint that defendants conspired to deprive her of various constitutional and state rights arising from Costner's personal relationship with Robert Zmuda and ensuing litigation. We have jurisdiction under 28 U.S.C.§1291. We review the district court's dismissal de novo. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293,1295 (9th Cir. 1998).

Because it appears beyond a doubt that Costner can prove no set of facts in support of her claims which would entitle her to relief, the district court properly dismissed her action. *See id.*

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2 The panel unanimously finds this case suiable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, we deny Costner's request for oral argument.

3 Although Costner purports to appeal on behalf of Let Go Productions, that entity is not properly represented before this court because Costner is not an attorney. See Church of the New Testament v. United States, 783 F.2d 771, 773-774 (9th Cir, 1986).

The district court did not err by vacating the default judgments because defendants appeared in the action. See Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 689-90 (9th Cir. 1988).

Judge Lew did not err by denying Costner's motion to disqualify Judge Byrne because Costner did not show that Judge Byrne displayed any extra judicial biass or deep seated and unequivocal antagonism. See Liteky v. United States, 510 U.S. 540, 556 (1994). Furthermore, Judge Lew's unsigned order denying Costner's motion to Vacate Judgment was valid because a clerk entered the order into the district court's docket at Judge lew's request, See Beaudry Motor Co. v. Abko Properties, Inc., 780 F.2d 751, 754-55 (9th Cir 1986)

The district court did not abuse its discretion by denying Costner's motion for reconsideration. See School Dist. No. 1J v. AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

Costner remaining contentions lack merit.

AFFIRMED.

February 2, 1999

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV-97- 9530-WMB (VAP)

CHERYLYNN COSTNER;
LET GO PRODUCTIONS,

Plaintiffs-Appellants,

v. **JUDGMENT**

COMIC RELIEF, INC.; et al.,

Defendants-Appellees.

Pursuant to the Order Adopting Findings, Conclusions and recommendation of United States Magistrate Judge,

IT IS ADJUDGED that Defendants Comic Relief, Inc., Robert Zmuda, and Florence Kellerhouse (erroneously named in Plaintiff's complaint as "Dolly Kellerhouse" are dismissed from the action with prejudice.

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Dated: Feb 2, 1999

WM. Matthew Byrne, Jr.
United States District Judge

February 2, 199

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV-97- 9530-WMB (VAP)

CHERYLYNN COSTNER; LET GO PRODUCTIONS,

Plaintiffs-Appellants,

v.

JUDGMENT

COMIC RELIEF, INC.; et al.,

Defendants-Appellees.

Pursuant to the Order Adopting Findings, Conclusions and recommendation of United States Magistrate Judge,

IT IS ADJUDGED that the State Defendants are dismissed from the action with prejudice.

Dated: Feb 2, 1999

WM. Matthew Byrne, Jr.
United States District Judge

February 2, 1999

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV-97- 9530-WMB (VAP)

CHERYLYNN COSTNER;
LET GO PRODUCTIONS,

Plaintiffs-Appellants,

v.

COMIC RELIEF, INC.; et al.,

Defendants-Appellees.

ORDER ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Complaint, all of the records herein and the attached Report and Recommendation of United States Magistrate Judge. The Court approves and adopts the Magistrate Judge's Report and Recommendation.

IT IS ORDERED that Judgment be entered dismissing Defendants Comic Relief, Inc., Robert Zmuda, and Florence Kellerhouse (erroneously named in Plaintiff's complaint as "Dolly Kellerhouse") from the action with prejudice.